

ORDINANCE NO. 12, 2008 SERIES

AN ORDINANCE RELATING TO THE IMPOSITION AND ADMINISTRATION OF AN OCCUPATIONAL LICENSE REQUIREMENT AND PAYMENT OF AN OCCUPATIONAL LICENSE TAX BY PERSONS AND A NET PROFITS TAX ON BUSINESS ENTITIES OR PERSONS CONDUCTING BUSINESS OR ENGAGING IN BUSINESSES, OCCUPATIONS AND PROFESSIONS WITHIN THE CITY OF FRANKFORT.

WHEREAS, the City of Frankfort Board of Commissioners is required to comply with the provisions of KRS 67.750 to 67.790 relating to the imposition of occupational license fees and net profits taxes on persons and business entities conducting business and/or engaging in occupations and professions within the City of Frankfort.

NOW THEREFORE, be it ordained by the City of Frankfort, Kentucky as follows:

Ordinance No. 12, 2008 Series is hereby enacted and shall read in full as follows:

Section I. Definitions:

- (1) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
 - a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;
- (3) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (4) "Employee" means any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee;
- (5) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (6) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:
 - (a) Sales and excise taxes paid; and
 - (b) Returns and allowances;
- (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate;
- (8) "Net profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:
 - a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
 - b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
 - c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;
 - d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
 - e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution or the Constitution and statutory laws of the United States;
- (9) "Non-Resident" is an individual, fiduciary, association or corporation domiciled outside the corporate limits of the city.
- (10) "Person" shall mean every natural person, whether a resident or non-resident of the City. Whenever the word "person" is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof.
- (11) "RENTAL REAL ESTATE" is as follows:
 - (a) A structure or mobile home located within the corporate limits of the city, which is regularly offered for occupancy, either wholly or in part in return for the payment of rent.
 - (b) Corporations, limited liability companies and partnerships, which receive income from rental real estate located within the city are presumed to be in the business of renting real estate and therefore subject to the license fee imposed by this subchapter on net profits derived therefrom and the other provisions of this subchapter.

(c) Individuals and fiduciaries who receive income from rental real estate located within the city are rebuttably presumed to be in the business of renting real estate and therefore subject to the license fee imposed by this subchapter on net profits derived therefrom and the other provisions of this subchapter if they receive more than \$100,000 gross receipts annually from the rental of real estate located within the city.

(d) The Director of Finance shall establish by regulation those factors which will be considered in determining whether the presumption of being in the business of renting real estate has been rebutted.

(12) "Resident". An individual, fiduciary, association or corporation domiciled or having a business situs within the corporate limits of the city.

(13) "Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;

(14) "Tax district" means a city of the first to fifth class, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes;

(15) "Taxable gross receipts," in case of a business entity having payroll or sales revenues both within and without a tax district, means gross receipts as defined in subsection (6) of this section, as apportioned under KRS 67.753;

(16) "Taxable gross receipts," in case of a business entity having payroll or sales revenue only in one (1) tax district, means gross receipts as defined in subsection (6) of this section;

(17) "Taxable net profit," in case of a business entity having payroll or sales revenue only in one (1) tax district, means net profit as defined in subsection (8) of this section;

(18) "Taxable net profit," in case of a business entity having payroll or sales revenue both within and without a tax district, means net profit as defined in subsection (8) of this section, as apportioned under Section II of this ordinance; and

(19) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

Section II. Levy of License Fee.

There is hereby levied and imposed an annual license fee upon all persons, fiduciaries and business entities engaged in any occupation, trade, profession or other business activity in the city for the privilege of engaging in the occupation, trade, profession or other business activity, which license fee shall be measured by and be equal to 1.75% of all salaries, wages, commissions and other compensation, including deferred compensation, earned by every person in the city for work done or services performed or rendered in the city and of the net profits of all businesses, professions or occupations from activities conducted within the city.

(Ord. 19, 1999, passed 7-12-99)

Section III. Employees.

(A) *Employees in general.* The license fee is imposed on both residents and nonresidents of the city at the rate of 1.75% of all salaries, wages, commissions and other compensation, including deferred compensation, earned for work done or services performed or rendered in the city. The following are subject to the license fee:

(1) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

(a) As an officer, agent or employee or both of a business entity, including a non-profit business entity;

(b) As an agent or employee, as distinguished from the proprietor, of a business, trade or profession, conducted by an individual owner;

(c) As an officer, agent or employee, whether elected or appointed, enlisted or commissioned, of a governmental entity, except those enlisted or commissioned in the State National Guard for compensation received for active duty training, training assemblies and annual field training; and

(d) As an officer, agent or employee of any other entity.

(2) Wages, bonuses or incentive payments received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered:

(a) Whether based upon hourly, daily, weekly, semimonthly, monthly, annual, unit of production or piece rates; and

(b) Whether paid by an individual, fiduciary, business entity, including a nonprofit business entity, governmental entity or any other entity.

(3) Commissions received by an employee, whether directly or through an agent, and whether in cash or in property for services rendered, regardless of how computed or by whom paid. If amounts received as a drawing account exceed the commissions earned the tax is payable on the amounts received. If the commissions are included in the net earnings of an occupation, trade, profession or other business activity regularly carried on by the individual and, therefore, are subject to license fee under Section IV, they shall not again be separately taxed.

(4) Fees, unless the fees are properly included as part of the net profits of occupation, trade, profession or business activity regularly carried on by the individual and the net profits, are subject to tax under Section IV. A corporation is permitted but not required to withhold and remit the license fee on compensation paid to directors. If the corporation does not withhold the fees, it must submit to the city a copy of IRS Form 1099.

(5) Other compensations will be treated as follows:

(a) Subject to the license fee:

1. Tips received by waiters and others (tips received are subject to the license fee and will be reported in the same manner as regular earnings);

2. Vacation and holiday benefits (payments made to employees by an employer as vacation wages are subject);

3. Separation payments (payments made to employees by an employer at the time of voluntary or involuntary separation, or dismissal, of the employee from the service of the employer are to be regarded as subject);

4. Deferred compensation (payments made to deferred compensation funds are subject to license fee at time of payment into a fund);

5. Flexible benefit plan (payments by employees to Section 125 plans, sometimes referred to as cafeteria plans, flexible benefit plans or miniflex plans, which provide the opportunity for employees to elect to reduce their taxable compensation to pay for nontaxable benefits such as hospitalization, group term life insurance, group disability insurance and the like, not otherwise paid for by the employer);

6. Non-cash fringe benefits (fringe benefits received by an employee to the extent that the benefits are taxable for federal income tax purposes); and

7. Other income: All other income paid by an employer and received by an employee for the performance of any activity subject to the license fee not expressly exempt unless the income is to be reported and a net profit license fee paid thereon under the provisions of this subchapter.

(b) Not subject to the license fee:

1. Old-age or retirement payments (periodical payments, commonly recognized as old-age or retirement pensions, made to persons retired from service after reaching a specified age or after a stated period of employment are not subject to the license fee);

2. Disability, sickness, accident benefits and unemployment compensation (Payments made to employees by an employer under a disability, sickness and accident plan are not subject to the license fee. Unemployment compensation payments by the state or any other governmental agency are not subject.);

3. Death benefits (death benefits payable by an employer to the beneficiary of an employee or to his or her estate, whether payable in a single sum or otherwise, are not subject to the license fee);

4. Benefits arising under the workers compensation act (amounts received by employees under the workers compensation act as compensation for a disability sustained during the course of employment, together with any amount of damages received by suit or agreement on account of the disability are not subject to the license fee);

5. Employee under age 16 (Compensation paid to employees who have not attained age 16 on or before the date the income is earned. Earnings of employees shall be subject on the day that age 16 is attained.);

6. Domestic servants (Compensation received by domestic servants is exempt from the license fee on wages imposed by the city. For purposes of this section, a **DOMESTIC SERVANT** is defined as an individual employed to drive his or her employer as a chauffeur or employed on the grounds or in the home of his or her employer to cook, clean, wash, garden, transport or otherwise care for or wait upon the employer, the employer's family and guests or to care for the person, home, grounds and/or vehicles of the employer, the employer's family and guests, including, but not limited to maids, butlers, nurses, nursemaids, gardeners, cooks, launderers and chauffeurs engaged to serve the employer, the employer's family and guests, but not including the individuals who are employed by a cleaning service, personal nursing service, chauffeuring service or other entity which offers the services of its employees to the public.);

7. State elected officers, who are paid on a per diem basis, as exempted by KRS 82.090. Applicability of the foregoing to employees whose compensation is not wholly subject to the City occupational license fee.

1. Individuals whose compensation is earned for services performed both within and without the City are subject to the license fee in the same proportion that services performed within the City bear to their total employment time. The occasional entry into the City of Frankfort of an employee, who (i) performs the duties for which he is employed entirely outside the City of Frankfort, but enters the City of Frankfort for the purposes of reporting, receiving instructions, testifying, accounting, etc., incidental to his duties outside the City of Frankfort, or (ii) spends a total of two eight hour work-days or less providing services in Frankfort and whose receipts for such services provided in Frankfort are less than \$1,600 annually, shall not be deemed activities for which occupational license fee is required to be paid to the City of Frankfort.

2. An employee earning not more than \$4,000 in the City of Frankfort per year or working not more than a total of 5 eight hour work days in the City of Frankfort per year for which the employee earns not more than \$4,000, may elect to pay a flat

occupational license fee to the City of Frankfort in the amount of \$35.00. In order to elect this payment option, the individual's employer is required to file with the City a completed Election to Pay Flat Tax Return Form signed by the employer and employee with the required \$35.00 payment with the employer's fourth quarter occupational license tax return no later than January 31 of the following year. The filing of this completed form with the required payment on behalf of an employee qualified to elect this payment option is deemed to satisfy the requirements of Section II of this Ordinance.

(B) *Specific groups of employees.*

(1) Musicians and entertainers:

(a) *Contractor.* An individual musician through whom the purchaser and the musician negotiate the contract of services and the performance thereof. The contractor may or may not perform actual musical service under a contract which he or she has negotiated.

(b) *Purchaser of music.* The person, fiduciary, corporation or association for whom or for which the musical services are to be performed or furnished and who exercises an employer's control over the conduct of the musicians; for example, hotels, cafés, adult entertainment establishments, taprooms, restaurants, theaters, clubs, radio stations and radio sponsors.

(c) *Responsibility for withholding fee.* When a contract for the purchase of music has been executed between a purchaser and a contractor, the musician shall be deemed to be the employee of the purchaser. The purchaser shall be the person responsible for withholding the license fee from the wages paid to the musicians, and the remittal thereof to the Director of Finance.

(d) *Entertainers other than musicians.*

1. An entertainer other than a musician is usually engaged by a purchaser through a booking agent. The booking agent, once the contract of employment has been executed, does not exercise an employer's control over the entertainer. The owner of any place which furnishes entertainment to the public or to its patrons, shall be deemed the person liable as an employer of entertainers.

2. The employers must deduct the license fee from the compensation paid to the entertainer and remit the same to the Director of Finance.

(2) Individuals earning commission sales.

(a) General. Individuals engaged in the sale of products and/or services may be either employees or independent contractors.

1. Where the individual is subject to the direct control of another as to the manner of his or her conduct and is paid a fixed fee, he or she is considered an employee and the amount of the license shall be withheld at the source.

2. Where the individual is not under the direct control of another and may conduct the sale as he or she sees fit, receiving his or her payment in the form of commission from the sale, he or she is considered an independent contractor and shall file his or her own return and make payment as an independent contractor subject to the provisions hereof.

(b) Commissions subject to license fee:

1. In determining whether the commissions payable by reason of the selling of any product and/or service by an agent resulted from work done or services performed or rendered in the city, the test shall be the residence of the purchaser at the time of issuance of the product and/or service, rather than the actual place of solicitation. However, where the solicitation is in the city and the individual's established place of business is within the city, the commission is subject to the license fee regardless of the residence of the purchaser.

2. If an individual has an office outside the city as well as an office within the city, the commission on products and/or services sold to nonresidents, if handled through the outside office, are not subject to a license fee.

(C) *Withholding of license fee:*

(1) It is the duty of each employer who employs one or more persons on a salary, wage, commission or other compensation basis, to deduct at the time of the payment of the compensation, the license fee on the salary, wage, bonus, incentive payment, commission or other compensation due by the employer to the employee. The license fee shall be deducted by the employer from all compensation paid to employees for activities in the city. However, the fact that the license fee is not withheld by the employer will not relieve the employee of the responsibility of filing a return and paying the fee on the compensation received. A nonresident employer maintaining in the city an office or business address or doing business therein is subject to the withholding provisions of this section.

(2) Where an employee receives compensation for personal services rendered or performed partly within and partly outside the city, the employer shall deduct and withhold that portion of the compensation which is earned within the city in accordance with the following rules of apportionment:

(a) If the licensee is a traveling sales person, agent or other employee whose compensation on the basis of commissions depends directly on the volume of business transacted by him or her, the deducting and withholding shall attach to the portion of the entire compensation which the volume of business transacted by the employee within the city bears to the volume of business transacted by him or her both within and outside of the city.

(b) The deducting and withholding of compensation of all other employees, including officers and directors of corporations, shall attach to the portion of the compensation of the employee which the total number of days employed within the city bears to the total number of working days employed both within and outside the city.

(c) If it is impossible to apportion the earnings as provided above because of the peculiar nature of the services of the employee, or of the usual basis of compensation, apportionment shall be made by other equitable method approved by the Director of Finance.

(d) The occasional entry into the city of an employee, who performs the duties for which he or she is paid entirely outside the city, but enters the city only for the purposes of reporting, receiving instructions or accounting incidental to duties performed outside the city shall not be deemed to take the employee out of the class of those rendering their services entirely outside the city.

(D) *Returns of license fee withheld and payment:*

(1) The return and payment to be made on account of deductions by employees from salaries, wages and other compensation of employees shall be made on a quarterly basis.

(2) The employer shall make a return and pay to the city the full amount of the license fee so deducted or withheld with respect to compensation paid to all employees and the return shall be due on or before the last day of the month following each quarterly period.

(3) The return required to be filed under this subchapter shall be made on a form furnished by or obtainable from the Director of Finance.

(4) If the due date of a return falls on a Saturday, Sunday or legal holiday, the return due date shall be the next succeeding day, which is not a Saturday, Sunday or legal holiday. Returns submitted other than by U.S. mail must be received on or before the due date. Returns submitted by U.S. mail will be considered received when mailed.

(5) On or before January 31, unless written request for extension is made to and granted by the Director of Finance, following any calendar year in which the deductions have been made by any employer, the employer shall file with the Director of Finance in the form prescribed by the Director an information return for each employee from whom the city license fee has been withheld.

(6) For convenience of employers, the information return may be made in one of two ways at the election of each employer, as follows:

(a) May submit a copy of Form W-2 for each employee; and

(b) Furnish a list of all employees from whom the fee has been withheld, which list shall set out the employee's full name, employee's taxable federal wages subject to the license fee, wages and other compensation subject to the license fee that is not included in federal taxable wages, total compensation paid subject to the license fee, and the amount of city license fee withheld. The list may be compiled on any mechanical equipment presently used by the employer. The employee's name must be indicated on each sheet, each sheet must be numbered and the total number of sheets comprising the complete report indicated on the first page.

(7) The gross compensation to be reported for each employee should be the full 12 calendar months of the year or the portion thereof as the employee reported on was employed.

(8) In addition to the information returns, and at the time the same are filed, the employer shall file with the Director of Finance a statement to enable the Director to reconcile the sum total of compensation paid and taxes withheld as disclosed by information return, W-2 or list and prior returns and remittances made pursuant to this subchapter.

(9) The failure of any employer, either residing within or outside of the city, to collect the license fee and to make the return shall not relieve the employee from compliance with this subchapter, with regard to the filing of returns and the payment of license fees. In the event the employer fails to make the return and pay the fee, the employee is required to make the return and pay the fee.

(10) Every employer is deemed to be a trustee of the city in withholding and collecting, the license fee required under this subchapter to be withheld, and the funds so collected by the withholding are deemed to be funds held in trust for the city. Every employer required to withhold and collect the license fee is liable directly to the city for the payment of the fee whether actually collected by the employer or not.

(Ord. 19, 1999, passed 7-12-99)

Section IV. Net Business Profits.

(A) (1) *General.* In the case of an individual, fiduciary, or business entity engaged in the conduct, operation or prosecution of any occupation, trade, profession or other business activity for profit there is imposed an annual license fee being the greater of \$35 or 1.75% of the net profits of the occupation, trade, professional or other business activity conducted in or derived from activity within the city. In determining the proportion or amount of the subject net profits of the person or entity doing business within and without the city, the licensee shall use and apply a business allocation percentage formula computed on the basis of business receipts within and without the city and payrolls within and without the city.

Section V. Apportionment of Net Profits or Gross Receipts of Business Entity.

(1) Except as provided in subsection (4) of this section, net profit or gross receipts shall be apportioned as follows:

(a) For business entities with both payroll and sales revenue in more than one (1) tax district, by multiplying the net profit or gross receipts by a fraction, the numerator of which is the payroll factor, described in subsection (2) of this section, plus the sales factor, described in subsection (3) of this section, and the denominator of which is two (2); and

(b) For business entities with sales revenue in more than one (1) tax district, by multiplying the net profits or gross receipts by the sales factor as set forth in subsection (3) of this section.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid or payable in the City of Frankfort during the tax period by the business entity for compensation, and the denominator of which is the total compensation paid or payable by the business entity everywhere during the tax period. Compensation is paid or payable in the City of Frankfort based on the time the individual's service is performed within the City of Frankfort.

(3) The sales factor is a fraction, the numerator of which is the total sales revenue of the business entity in the City of Frankfort during the tax period, and the denominator of which is the total sales revenue of the business entity everywhere during the tax period.

(a) The sale, lease, or rental of tangible personal property is in the City of Frankfort if:

1. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within the City of Frankfort regardless of the f.o.b. point or other conditions of the sale; or

2. The property is shipped from an office, store, warehouse, factory, or other place of storage in the City of Frankfort and the purchaser is the United States government.

3. A sale resulting in the delivery of goods outside the city by the U.S. Postal Service or by common carrier, originating from the seller's facility inside the city, is not a sale made within the city. Deliveries made by a private carrier, hauler or other delivery agent or consignee, not otherwise identified as the U.S. Postal Service or a common carrier are sales within the City.

(b) Sales or revenues, other than revenues from the sale, lease, or rental of tangible personal property or the lease or rental of real property, are apportioned to the City of Frankfort based upon a fraction, the numerator of which is the time spent in performing such income-producing activity within the City of Frankfort and the denominator of which is the total time spent performing that income-producing activity.

(c) Sales revenue from the lease or rental of real property is allocated to the tax district where the property is located.

(4) However, if one of the factors, receipts or payrolls is missing, the remaining percentage is the business allocation

percentage. A factor is not to be deemed missing merely because the expenditures of the licensees for payrolls or the gross receipts of the licensees are found to be situated, incurred or received either entirely within or without the city.

(5) If the apportionment provisions of this section do not fairly represent the extent of the business entity's activity in the City of Frankfort, the business entity may petition the City of Frankfort or the City of Frankfort may require, in respect to all or any part of the business entity's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one (1) or more of the factors;

(c) The inclusion of one (1) or more additional factors which will fairly represent the business entity's business activity in the City of Frankfort; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of net profit or gross receipts.

(6) Compensation for work done and performed or services rendered.

(a) The term **COMPENSATION** may include not only payment in cash or property but also the gross credits to or charges by the licensee, under its normal and usual accounting practices, for the performance of work or services. For example, a plant, factory or other establishment in the city which processes material or manufactures parts for other plants or factories owned by the licensee, and which may receive credit for the performance of the services only by bookkeeping entries, may be chargeable under this section with the gross amount of the entries in applying the formula discussed hereunder. Furthermore, the bookkeeping entries may be considered in lieu of cash or property payment in determining the net profits of any licensee under this subchapter, even though the business allocation percentage formula may not be used by or be applicable to the licensee. However, whenever the gross receipts or charges are included in computing the net profits of any licensee shall not be twice subject in the same fee period by the separate imposition of a fee upon the gross credits or charges.

(b) Compensation and other receipts from work done or services performed within the city are allocable to the city and subject under this section. All amounts so received credited or charged by a licensee in payment for the work or services are so allocable, irrespective of whether done or performed by employees or agents of the licensee, by subcontractors or by any other persons. It is immaterial where the amounts were payable or where they were received. Commissions or fees received by the licensee are allocated to the city if the services for which the commissions were paid were performed in the city. If the licensee's services for which commissions or fees were paid were performed for the licensee by salespersons or other agents or employees attached to or working

out of the city place of business of the licensee, the licensee's services will be deemed to have been performed in the city. Where a lump sum is received by the licensee in payment for services within and without the city, the amount attributable to services within the city is to be determined on the basis of the relative values of or amounts of time spent in the performance of the services within and without the city or by some other reasonable method approved by the Director of Finance. Full details must be submitted with the licensee's report.

(c) All business receipts earned by the licensee within the city are allocable to the city. Business receipts are not considered to have been earned by the licensee in the city solely by reason of the fact that they were payable in or actually received in the city. Receipts for sales of capital assets, property not held by the licensee for sale to customers in the regular course of business, are not business receipts. Receipts from the sale of real property held by the licensee as a dealer for sale to customers in the regular course of business are business receipts and are allocable to the city if the real property was situated in the city. Receipts from sales of intangibles included in business capital, held by the licensee as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to the city if the sales were made in the city or through a regular place of business of the licensee in the city.

(6) Wages, salaries and other compensation are computed on the cash or accrual basis in accordance with the method of accounting used in the computation of the entire net income of the licensee. Employees within the city include all employees regularly connected with a place of business maintained by the licensee in the city. Wherever it appears that the licensee's payroll was paid to employees attached to places of business outside the city who performed services within the city, the payroll factor is to be computed by deriving the percentage which the licensee's payroll paid in the city bears to his or her total payroll. In any such case, where an employee performed services both within and without the city, the amount treated as compensation for services performed within the city shall be deemed to be:

(a) In the case of an employee whose compensation depends directly on the volume of business secured by him or her, such as a salesperson on a commission basis, the amount received by him or her for the business attributable to his or her efforts within the city;

(b) In the case of an employee whose compensation depends on other results achieved, the proportion of the total compensation which the value of his or her services within the city bears to the value of all his or her services; and

(c) In the case of an employee compensated on a time basis, the proportion of the total amount received by him or her which the working time employed in the city bears to the total working time.

(7) *New business license fee.* Every person, fiduciary, or business entity conducting a business, as defined in this subchapter, shall obtain a license from the Director of Finance before commencement of the business, the fee for which shall be \$35, except that no fee shall be required of minors of the ages of 16 and 17. This fee will be credited in full to the account of the license payer and applied against the annual net business profit fee on the first occasion it regularly becomes due thereafter.

(8) Sufficient Nexus Test.

(1) A business entity or individual engaged in a business, profession, trade or occupation shall be deemed to be subject to the net business profits fee if the business entity or individual has a Nexus with the City of Frankfort sufficient to justify the imposition of the license fee in a manner consistent with the commerce clause and due process clause of the 14th Amendment to the Constitution of the United States and other applicable federal law. If the business entity or individual has a sufficient Nexus with the City of Frankfort, but also has a sufficient Nexus with other governmental units, then the net profits derived from activities conducted within the City of Frankfort shall be determined by the apportionment formula set forth in this Ordinance.

(a) Establishing Nexus. Without excluding by implication other activities which may create a Nexus, one or more of the following connections between a business entity, or individual and in the City of Frankfort shall normally establish a sufficient Nexus;

(i) Location of a place of business in the City of Frankfort;

(ii) Frequent and continuing entry into the City of Frankfort in the course of business by an officer or employee of the business entity. The occasional entry into the City of Frankfort by an officer or employee of a business entity for which said officer or employee is not required to pay occupational license fee to the City of Frankfort under Section III (A) (7) (c) does not, by itself, constitute frequent and continuing entry into the City of Frankfort in the course of business by an officer or employee of the business entity for purposes of this section;

(iii) Delivery of goods to residents in the City of Frankfort other than through the mails or by common carrier;

(iv) Contracting to sell goods in the City of Frankfort; and,

(v) Conducting substantial business activity in the City of Frankfort leading to a contract to buy or sell goods;

(b) Business locations within the City of Frankfort. The absence of a branch, office, store, warehouse or other permanent place of business within the City of Frankfort shall not exempt or render non-licensable the net profits of any trade, business, profession, enterprise, undertaking or other activity on which a license fee is imposed by the ordinance.

(9) Payment Election.

Every person, fiduciary, or business entity conducting business in the City of Frankfort that earns not more than \$4,000 per year in net profits on business conducted in Frankfort and that does not have an employee working more than a total of 5 eight-hour work days per year in the City for which the employee earns more than \$4,000, may elect to pay a flat business license fee to the City of Frankfort in the amount of \$100.00. In order to elect this payment option, the person, fiduciary, or business entity conducting business in the City of Frankfort is required to file a completed Election to Pay Flat Net Business Profits Tax Return Form with the required \$100.00, and submit it with the Net Profits Tax Return Form on or before April 15 of the following year. The filing of the completed forms with the required payment on behalf of a person, fiduciary, corporation or association qualified to elect this payment

option is deemed to satisfy the requirements of this Ordinance. This section shall not apply to itinerant merchants within the meaning of Section 111.21 of the City of Frankfort's Code of Ordinances.

Section VI. Exemptions.

The following are exemptions to this subchapter:

(A) Compensation received by ministers of religion taxable for federal income tax purposes pursuant to the Internal Revenue Code is exempt from the license fee on wages imposed by this subchapter. Compensation received by ministers not taxable for federal income tax purposes pursuant to the Internal Revenue Code is not subject to the license fee imposed by this subchapter. For purposes of this section, a "minister" is defined as a natural person who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect or other religious organization, to teach and preach its doctrine or to administer rites in public worship, and who regularly performs one or more of these duties. No person is exempt from the payment of an employee license fee on compensation earned in activities, not connected with the regular functions of a religious organization. Thus, compensation earned by ordained persons employed as chaplains, teachers, administrators, musicians or counselors whose employment is connected with the regular functions of a religious organization is exempt. Compensation earned by persons who are not ordained is not exempt regardless of the religious nature of the individual's work.

(B) Persons under age 16.

(C) (1) The legally blind shall be exempt from the payment of the City of Frankfort occupational license tax to the extent that their net annual salaries, wages or other compensation does not exceed fifteen thousand dollars per year. The legally blind shall be exempt from the payment of the City of Frankfort net business profits tax in excess of \$35.00 to the extent that their net annual income does not exceed fifteen thousand dollars per year.

(2) "Legally blind", as used herein, shall mean that the individual claiming exemption has (a) central visual acuity of not better than 20/200 in the better eye with corrective lenses, or (b) such individual's visual acuity is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(3) The return required by Section 110.07 must be filed by or on behalf of the individual, fiduciary, association or corporation claiming the exemption in order to qualify for the exemption.

Section VII. Purpose of Ordinance.

This subchapter is enacted as a revenue measure and not as a regulatory measure. All revenue derived as a result of this subchapter shall be deposited in the general fund of the city for general municipal expenses.

(Ord. 19, 1999, passed 7-12-99)

Section VIII. Quarterly Estimated Tax Payments.

(1) Every business entity, other than a sole proprietorship, subject to a net profits, gross receipts, or occupational license tax levied by the City of Frankfort shall make quarterly estimated tax payments on or before the fifteenth day of the fourth, sixth, ninth, and twelfth month of each taxable year if the tax liability for the taxable year exceeds five thousand dollars (\$5,000).

(2) The quarterly estimated tax payments required under subsection (1) of this section shall be based on the lesser of:

(a) Twenty-two and one-half percent (22.5%) of the current taxable year tax liability;

(b) Twenty-five percent (25%) of the preceding full year taxable year tax liability; or

(c) Twenty-five percent (25%) of the average tax liability for the three (3) preceding full year taxable years' tax liabilities if the tax liability for any of the three (3) preceding full taxable years exceeded twenty thousand dollars (\$20,000).

(3) Any business entity that fails to submit the minimum quarterly payment required under subsection (2) of this section by the due date for the quarterly payment shall pay an amount equal to twelve percent (12%) per annum simple interest on the amount of the

quarterly payment required under subsection (2) of this section from the earlier of:

(a) The due date for the quarterly payment until the time when the aggregate quarterly payments submitted for the taxable year equal the minimum aggregate payments due under subsection (2) of this section; or

(b) The due date of the annual return.

A fraction of a month is counted as an entire month.

(4) The provisions of this section shall not apply to any business entity's first full or partial taxable year of doing business in the City of Frankfort or any first taxable year in which a business entity's tax liability exceeds five thousand dollars (\$5,000).

Section IX. Returns and Payment of Fees.

(A) Every person, fiduciary, or business entity whose earnings or net profits are subject to the license fee imposed by this subchapter shall make and file a return with the Director of Finance. In the return filed, there shall be set forth the aggregate amount of salaries, wages, bonuses, incentive payments, commissions, fees and other compensation received or net profits earned by and during the preceding year within the city and subject to the license fee, together with other pertinent information as the Director of Finance may require.

(B) Where the entire earnings for the year are paid by the same employer and the license fee has in each instance been withheld or deducted by the employer from the gross amount of compensation without adjustment for expenses, it shall not be necessary for the employee to file a return for the year unless required or requested to do so by the Director of Finance.

(C) Where any portion of the license fee otherwise due shall have been deducted at the source and shall have been paid to the city, a credit equal to the amount so paid shall be deducted from the amount shown to be due and only the balance, if any, shall be due and payable at the time of filing the return.

(D) Persons, fiduciaries, or business entities temporarily engaged in business within the city or temporarily performing services within the city shall file a return and pay the license fee upon the completion of the business or employment.

(E) On or before February 28 of the year following the year for which the return and licensee fee are due unless written request for extension is made to and granted by the Director of Finance, every individual, fiduciary, corporation or association making non-employee payments within the city shall file with the Director of Finance in the form prescribed by the Director, an information return disclosing non-employee payments of \$600 or more made for services performed within the city. For convenience of the payer, the information return may be made in either of the following methods:

(1) The payer may submit a copy of applicable IRS Form 1099(s); and

(2) The payer may furnish a list of non-employee payments made, which list shall set out the name, mailing address, social security number or Federal I.D. number of the non-employee, the total payments made to the non-employee and the amount of non-employee payment made that were for services that were performed within the city.

(Ord. 19, 1999, passed 7-12-99)

Section X. Refund of Estimated Taxes.

(1) In the case where the tax computed under this ordinance is less than the amount which has been declared and paid as estimated tax for the same taxable year, a refund shall be made upon the filing of a return.

(2) (a) Overpayment resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year;

(b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this ordinance.

(3) At the election of the business entity, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

Section XI. Applicability of Federal Income Tax Law, Business Entity to Keep Records.

(1) For purposes of this ordinance, computations of gross income and deductions there from, gross receipts or sales, and deductions therefrom, accounting methods, and accounting procedures shall be as nearly as practicable identical with those required for federal income tax purposes.

(2) Every business entity subject to an occupational license tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as the City of Frankfort from time to time may prescribe. Whenever the City of Frankfort deems it necessary, the tax district may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the City of Frankfort deems sufficient to determine the tax liability of the business entity.

(3) The City of Frankfort may require, for the purpose of ascertaining the correctness of any return or for the purposes of making an estimate of the taxable income of any business entity, the attendance of a representative of the business entity or of any other person having knowledge in the premises.

Section XII. Tax Liability of Business Entity that Ceases Doing Business in Frankfort.

If any business entity dissolves or withdraws from the City of Frankfort during any taxable year, or if any business entity in any manner surrenders or loses its charter during any taxable year, the dissolution, withdrawal, or loss or surrender of charter shall not defeat the filing of returns and the assessment and collection of net profit or gross receipts taxes or tax withheld for the period of that taxable year during which the business entity had net profit or gross receipts or tax withheld in the City of Frankfort.

Section XIII. Use of Tax Year and Accounting Methods Required for Federal Income Tax Purposes.

If a business entity makes, or is required to make, a federal income tax return, the net profit or gross receipts shall be computed for the purposes of this ordinance on the basis of the same calendar or fiscal year required by the federal government, and shall employ the same methods of accounting required for federal income tax purposes.

Section XIV. When Returns Are to be Made, Copy of Federal Tax Return to be Submitted with Return.

(1) All business entities' returns for the preceding taxable year shall be made by April 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns shall be supplied by the City of Frankfort.

(2) Every business entity shall submit a copy of its federal income tax return at the time of filing its return with the City of Frankfort. Whenever, in the opinion of the City of Frankfort, it is necessary to examine the federal income tax return of any business entity in order to audit the return, the City of Frankfort may compel the business entity to produce for inspection a copy of all statements and schedules in support thereof. The City of Frankfort may also require copies of reports of adjustments made by the federal government.

Section XV. Extensions.

(1) The City of Frankfort may grant any business entity or person an extension of not more than six (6) months, unless a longer extension has been granted by the Internal Revenue Service or is agreed to by the City of Frankfort and the business entity or person, for filing its return, if the business entity or person, on or before the date prescribed for payment of the tax, requests the extension and pays the amount properly estimated as its tax.

(2) If the time for filing a return is extended, the business entity or person shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due on the return, but not previously paid, from the time the tax was due until the return is actually filed and the tax paid to the City of Frankfort. A fraction of a month is counted as an entire month.

(3) *Procedure.* No standard form for requesting an extension of time for filing is prescribed. Any written communication from the applicant, or his or her attorney or accountant, which clearly states the request, will be acceptable if filed with the Director of Finance on or before the due date involved. Federal forms 4868, 8736 or 7004 will be accepted as a valid written request for extension.

(Ord. 19, 1999, passed 7-12-99)

Section XVI. Enforcing Officers; Powers and Duties.

(A) The Director of Finance is hereby charged with the enforcement of the provisions of this subchapter and he or she is hereby empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this subchapter, including, but not limited to provisions for the reexamination and

correction of returns as to which an overpayment or underpayment is claimed or found to have been made. The rules and regulations promulgated by him or her shall be binding upon the licensees and the employers.

(B) The Director of Finance or any agent or employee designated in writing by him or her is hereby authorized to examine the books, papers and records of any employer or supposed employer or of any licensee or supposed licensee in order to determine the accuracy of any return made or if no return was made to ascertain the amount of license fee imposed by the terms of this subchapter. Each employer or supposed employer or licensee or supposed licensee is hereby directed and required to give to Director of Finance or his or her duly authorized agent or employee the means, facilities and opportunity for the examination and investigation as are hereby authorized. The Director of Finance is hereby authorized to examine any person under oath concerning any wages, salaries, commissions or other compensation or net profits which were or should have been returned; and to this end, he or she may compel the production of books, papers, records including copies of forms and schedules filed with the Internal Revenue Service or the Secretary of the Revenue Cabinet and the attendance of all persons before him or her, whether as parties or witnesses, whom he or she believes to have knowledge of the wages, salaries, commissions or other compensation or net profits, to the extent that any officer empowered to administer oaths in the state is permitted to so order.

(Ord. 19, 1999, passed 7-12-99)

Section XVII. Tax Due When Return Filed. Minimum and Maximum Liability.

(1) The full amount of the unpaid tax payable by any business entity or person, as appears from the face of the return, shall be paid to the City of Frankfort at the time prescribed for filing the tax return, determined without regard to any extension of time for filing the return.

(2) The City of Frankfort may impose minimum and maximum tax liabilities for the tax on net profits or gross receipts.

Section XVIII. Auditing of Returns. Payment of Additional Tax. Federal Audit.

(1) As used in this section and this ordinance, unless the context requires otherwise:

(a) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income or gross receipts as reported on the business entity's or person's federal income tax return become final and unappealable; and

(b) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.

(2) As soon as practicable after each return is received, the City of Frankfort may examine and audit it. If the amount of tax computed by the City of Frankfort is greater than the amount returned by the business entity or person, the additional tax shall be assessed and a notice of assessment mailed to the business entity or person by the City of Frankfort within five (5) years from the date the return was filed, except as otherwise provided in this subsection.

(a) In the case of a failure to file a return or of a fraudulent return the additional tax may be assessed at any time.

(b) In the case of a return where a business entity or person understates net profit or gross receipts, or omits an amount properly includable in net profit or gross receipts, or both, which understatement or omission or both is in excess of twenty-five percent (25%) of the amount of net profit or gross receipts stated in the return, the additional tax may be assessed at any time within six (6) years after the return was filed.

(c) In the case of an assessment of additional tax relating directly to adjustments resulting from a final determination of a federal audit, the additional tax may be assessed before the expiration of the times provided in this subsection, or six (6) months from the date the City of Frankfort receives the final determination of the federal audit from the business entity, whichever is later. The times provided in this subsection may be extended by agreement between the business entity or person and the City of Frankfort. For the purposes of this subsection, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day. Any extension granted for filing the return shall also be considered as extending the last day prescribed by law for filing

the return.

(3) Every business entity or person shall submit a copy of the final determination of the federal audit within thirty (30) days of the conclusion of the federal audit.

(4) The City of Frankfort may initiate a civil action for the collection of any additional tax within the times prescribed in subsection (2) of this section.

Section XIX. Revocation or Suspension of License; Right to Appeal.

(A) Any business license issued by the city may be revoked by the Director of Finance or suspended for any period of time determined by the Director to be reasonable and appropriate under the circumstances, for any of the following reasons:

(1) Failure of any person, fiduciary, business entity or employer to timely file any return required by this subchapter;

(2) Failure of an employer to pay to the city the occupational license fees withheld and collected pursuant to this subchapter;

(3) Failure of any person, fiduciary, or business entity to pay any fee imposed by this subchapter when due; or

(4) Failure of the licensee to comply with the applicable provisions of this chapter.

(B) Upon a determination that any one or more of the above derelictions have occurred, the Director of Finance shall notify the licensee in writing of the city's intention to revoke or suspend the licensee's business license for cause, as the case may be, and shall direct the licensee to appear at the Director of Finance's Office, or respond in writing, within ten days of receipt of notice, to show cause why the licensee's business license should not be revoked or suspended. This notification shall be sent to both the owner and operator of the business licensed therein, if the two are not the same. During the ten-day response period the licensee shall have the opportunity to present any evidence that a return has been filed or that the aforementioned fees and/or taxes have been paid or are not due, or other evidence of good cause for failure to file and/or pay same.

(C) Within 30 days after the expiration of the ten-day response period, the Director of Finance shall review all evidence submitted by the licensee, require the audits as are necessary for the determination of whether or not the contested amounts are disputed in good faith and upon a preliminary determination that cause for revocation or suspension of the licensee's business license is found to exist, the Director of Finance shall promptly conduct a due process hearing at which time the licensee shall be allowed to appear and present witnesses and/or evidence on its behalf. Notice of the hearing shall be sent by the Director of Finance to the licensee, by certified mail, return receipt requested at least seven days prior to the scheduled hearing. A record of the hearing shall be kept. If the licensee fails to appear at the hearing, or fails to establish full compliance with this subchapter, the Director of Finance shall revoke or suspend the

license of the business, as deemed as reasonable and appropriate under the circumstances, and the licensee shall immediately cease operation of its business for the duration of the revocation or suspension. Notice of revocation or suspension of any business license shall be sent to the licensee or operator of the business license therein.

(D) *Right of appeal.* Any business licensee whose occupational license has been revoked or suspended by the Director of Finance pursuant to the foregoing provisions, may appeal the revocation or suspension to the Board of Commissioners, by filing with the City Clerk within ten days of the date of revocation or suspension, a written notice of appeal, along with a copy of the notice of revocation or suspension and a statement of the reasons why the revocation or suspension should be overruled. Within 30 days of the filing of the notice of appeal hereunder, the Board of Commissioners shall review all evidence of record on appeal, and may consider additional testimony or evidence from the licensee or city personnel, in its sole discretion. The Board of Commissioners shall uphold the revocation or suspension imposed by the Director of Finance if it is supported by substantial evidence. The Board of Commissioners shall notify the Director of Finance and the licensee of its decision within seven days after the completion of its appellate review. The decision of the Board of Commissioners upon the appeal shall be a final administrative determination.

(E) Revocation or suspension of a business license hereunder shall be in addition to the imposition of any other penalty prescribed by this subchapter or any other ordinance, statute or law. The city may take any and all necessary and appropriate measures to enforce this section including obtaining injunctive relief to prevent a person or entity from operating a business within the city without first obtaining the required license.

(Ord. 19, 1999, passed 7-12-99)

Section XX. Audit and Assessment Appeal Process.

(A) The Department is authorized to make refunds on claims filed with the Department of Finance. The licensee may initiate a refund by filing a claim with the Department. The claim must be prepared so as to set out: The licensee's name, address and the form of organization; The calendar or fiscal year involved; Amount of license fee paid with dates of payment; Amount of license fee refund requested; A certificate that the licensee is not indebted to the city for other fees or taxes; and A statement of licensee's reason for believing that a refund should be granted. Separate claims shall be filed for each period. If the basis of the claim rests upon an interpretation of law or of the treatment of any item or items in the return, an amended return is ordinarily not required and the claim alone will be sufficient. If the original return contained errors of fact necessitating correction, an amended return must be filed. No claim for refund of taxes paid pursuant to a net profit license tax return filed by the taxpayer shall be allowed after three years from the original due date of the return. No claim for refund of license fee tax withheld by an employer shall be allowed after April 15 of the year following the year in which the claimed overpayment was withheld

(B) A licensee subject to the license fee is required to keep the records as will enable the filing of true and accurate returns, and the records must be preserved to enable the Department of Finance to verify the correctness of returns filed. The Department or its representative may audit any return and examine any records bearing upon matter required to be included in the return. Proof may be required in support of any item. If as a result of audit a return is found to be incorrect, the Department must assess and collect any underpayment for the entire period that erroneous returns were filed. No audit assessment can be made on a filed return three years past the original due date of the return, except the three-year assessment period will be extended for any audit year when the audit begins prior to and ends after the three-year assessment date.

(C) A licensee shall have the right to appeal audit findings or an additional assessment within 30 days from notification to the licensee of the audit results by: Sending a written notice, including sufficient documentation to support the appeal, to the Director of Finance; or Scheduling a meeting with the Director of Finance to explain the appeal and present evidence. After receiving documentation and/or hearing the licensee, the Director of Finance shall, within seven days after the conclusion of the review, in writing affirm, modify or withdraw the assessment.

(D) A licensee shall have the right to appeal a reaffirmed or adjusted audit assessment of the Director of Finance within 30 days from the date of adjusted audit assessment by sending a written notice of appeal, including sufficient documentation to support the appeal, to the City Manager. Within 30 days of the filing of the notice of appeal hereunder, the City Manager shall review all evidence of record on appeal. The City Manager shall, within seven days after the completion of the review, in writing affirm, modify or reverse the Director of Finance assessment.

(E) A licensee shall have the right to appeal a reaffirmed or adjusted audit assessment of the City Manager within 30 days from the date of adjusted audit assessment by sending a written notice of appeal, including sufficient documentation to support the appeal to the City Clerk. Within 30 days of the filing of the notice of appeal hereunder, the Board of Commissioners shall review all evidence of record on appeal. The Board of Commissioners shall, within seven days after the completion of its appellate review, in writing affirm, modify or reverse the City Manager assessment. The decision of the Board of Commissioners upon the appeal shall be final.

(Ord. 19, 1999, passed 7-12-99)

Section XXI. Payment of Tax Not Delayed. Claims for Refund or Credit.

(1) No suit shall be maintained in any court to restrain or delay the collection or payment of any tax subject to the provisions of this ordinance.

(2) Any tax collected pursuant to the provisions of this ordinance may be refunded or credited within two (2) years of the date prescribed by law for the filing of a return or the date the money was paid to the tax district, whichever is the later, except that:

(a) In any case where the assessment period contained in Section XVIII has been extended by an agreement between the business entity or person and the City of Frankfort, the limitation contained in this subsection shall be extended accordingly.

(b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the business entity or person shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

(3) Exclusive authority to refund or credit overpayments of taxes collected by the City of Frankfort is vested in that the City of Frankfort.

Section XXII. Employer to Withhold Tax.

Every employer making payment of compensation to an employee shall deduct and withhold upon the payment of the compensation any tax imposed against the compensation by a tax district. Amounts withheld shall be paid to the City of Frankfort in accordance with Section XXIII. The City of Frankfort may impose minimum and maximum tax liabilities for the tax on compensation.

Section XXIII. Employer to Report Tax Withheld. Liability of Employer for Failure to Withhold or Pay Tax.

(1) Every employer required to deduct and withhold tax under Section XXII shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter make a return and report to the City of Frankfort the tax required to be withheld under Section XXII unless the employer is permitted or required to report within a reasonable time after some other period as determined by the City of Frankfort.

(2) Every employer who fails to withhold or pay to the City of Frankfort any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the City of Frankfort for any sum or sums withheld or required to be withheld in accordance with the provisions of Section XXII.

(3) The City of Frankfort shall have a lien upon all the property of any employer who fails to withhold or pay over to the City of Frankfort sums required to be withheld under Section XXII. If the employer withholds but fails to pay the amounts withheld to the City of Frankfort, the lien shall commence as of the date the amounts withheld were required to be paid to the City of Frankfort. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the City of Frankfort.

(4) Every employer required to deduct and withhold tax under Section XXII shall annually on or before February 28 of each year complete and file on a form furnished or approved by the City of Frankfort a reconciliation of the tax withheld in each tax district where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax statements, or a detailed employee listing with the required equivalent information as determined by the City of Frankfort shall be submitted.

(5) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and license tax deducted by the employer from the compensation paid to the employee for payment to the City of Frankfort during the preceding calendar year.

Section XXIV. Personal Liability of Officers of Business Entity.

(1) An employer shall be liable for the payment of the tax required to be deducted and withheld under Section XXII.

(2) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to Section XXII shall be personally and individually liable, both jointly and severally, for any tax required to be withheld under this ordinance from compensation paid to one or more employees of any business entity, and neither the corporate dissolution or withdrawal of the business entity from the tax district nor the cessation of holding any corporate office shall discharge that liability of any person; provided that the personal and individual liability shall apply to each or every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection who had no authority to collect, truthfully account for, or pay over any tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.

(3) Every employee receiving compensation in the City of Frankfort subject to the tax imposed under KRS 68.180, 68.197, 91.200, or 92.281 shall be liable for the tax notwithstanding the provisions of subsections (1) and (2) of this section.

Section XXV. Application for Refund or Credit. When Employee May File for Refund.

(1) Where there has been an overpayment of tax under Section XXII, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under Section XXII by the employer.

(2) Unless written application for refund or credit is received by the City of Frankfort from the employer within two (2) years from the date the overpayment was made, no refund or credit shall be allowed.

(3) An employee who has compensation attributable to activities performed outside the City of Frankfort, based on time spent outside the City of Frankfort, whose employer has withheld and remitted the occupational license fee on the compensation attributable to activities performed outside the City of Frankfort to the City of Frankfort, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the City of Frankfort may confirm with the employer the percentage of time spent outside the City of Frankfort and the amount of compensation attributable to activities performed outside the City of Frankfort prior to approval of the refund.

Section XXVI. Penalties, Confidentiality of Information Filed with this City of Frankfort.

(1) A business entity or person subject to tax on gross receipts or net profits may be subject to a penalty equal to five percent (5%) of the tax due for each calendar month or fraction thereof if the business entity or person:

(a) Fails to file any return or report on or before the due date prescribed for filing or as extended by the City of Frankfort; or

(b) Fails to pay the tax computed on the return or report on or before the due date prescribed for payment. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(2) Every employer who fails to file a return or pay the tax on or before the date prescribed under Section XXIII may be subject to a penalty in an amount equal to five percent (5%) of the tax due for each calendar month or fraction thereof. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25).

(3) In addition to the penalties prescribed in this section, any business entity, person, or employer shall pay, as part of the tax, an amount equal to twelve percent (12%) per annum simple interest on the tax shown due, but not previously paid, from the time the tax was due until the tax is paid to the City of Frankfort. A fraction of a month is counted as an entire month.

(4) Every tax subject to the provisions of Section I through Section XXVI, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the taxpayer to the City of Frankfort.

(5) In addition to the penalties prescribed in this section, any business entity, or person, or employer who willfully fails to

make a return, willfully makes a false return, or willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.

(6) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.

(7) A return for the purpose of this section shall mean and include any return, declaration, or form prescribed by the City of Frankfort and required to be filed with the City of Frankfort by the provisions of this ordinance, or by the rules of the City of Frankfort or by written request for information to the business entity or person by the City of Frankfort.

(8) (a) No present or former employee of the City of Frankfort shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the City of Frankfort or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the City of Frankfort from testifying in any court, or from introducing as evidence returns or reports filed with the City of Frankfort, in an action for violation of a tax district tax laws or in any action challenging the City of Frankfort tax laws.

(b) Any person who violates the provisions of paragraph (a) of this subsection by intentionally inspecting confidential taxpayer information without authorization shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.

(c) Any person who violates the provisions of paragraph (a) of this subsection by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.

(9) The City of Frankfort may file a lawsuit against business entities and/or persons to enforce the provisions of this ordinance, including the requirement to make and file returns, to pay occupational license fee and net profits tax, and shall be entitled to recover its attorneys fees and court costs incurred in said lawsuit.

Section XXVII. The City of Frankfort May Levy One Time Tax Rate.

Notwithstanding the maximum tax rates in KRS 68.180, 68.197, and 91.200, the City of Frankfort may levy a net profits tax rate that would generate approximately the same amount of revenues as the prior year plus normal revenue growth experienced by the City of Frankfort over the prior five (5) years. The City of Frankfort may invoke the provisions of this section only once.

Section XXVIII. Severability.

Each section and each provision of each section of this ordinance is severable, and if any provision, section, paragraph, sentence or part thereof, or the application thereof to any person, licensee, class or group, is held by a court of law to be unconstitutional or invalid for any reason, such holding shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence, and part thereof, separately and independently from the rest.

First reading on the 19th day of May, 2008.

Final adoption on the 23rd day of June, 2008.

S/William I. May, Jr.

T/Mayor

Attest:

S/Ramona W. Newman, CKMC

T/City Clerk

Summary: This ordinance adopts and enacts the provisions of KRS 67.750 to 67.790 relating to the imposition of occupational license fees and net profits taxes on persons and business entities conducting business and/or engaging in occupations and professions within the City of Frankfort Code of Ordinances of the City of Frankfort, Kentucky as required by Kentucky law.

S/Robert C. Moore

T/City Solicitor

Published in full July 1, 2008